

Message Text

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PAGE 01 BRASIL 10618 01 OF 02 301413Z
ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 L-03 NSCE-00 CAB-02 CIAE-00
COME-00 DODE-00 DOTE-00 INR-07 NSAE-00 CIEP-01 FAA-00
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FM AMEMBASSY BRASILIA
TO SECSTATE WASHDC 9356
INFO AMCONSUL RIO DE JANEIRO
AMCONSUL SAO PAULO

LIMITED OFFICIAL USE SECTION 1 OF 2 BRASILIA 10618

E.O. 11652: N/A
TAGS: EAIR, BR
SUBJ: AVIATION FUEL CHARGES

REF: (A) BRASILIA 10363, (B) STATE 305724, (C) BRASILIA 10108,
(D) BRASILIA 9942, (E) BRASILIA 10419

1. SUMMARY. FULL SIGNIFICANCE OF NEW CHARGE -- 8.3 PERCENT --
EFFECTED BY DECREE LAW 1490 IS UNDER STUDY BY MAJOR INTERNA-
TIONAL CARRIERS IN RIO, THEIR LEGAL ADVISOR THERE, AND HOME
OFFICES OF SOME CARRIERS. THE RIO GROUP IS EXPECTED TO MEET
IN JANUARY TO CONSIDER FURTHER THEIR ALTERNATIVES, AMONG THEM
SEEKING A RESTRAINING ORDER THROUGH THE COURTS (PANAM WOULD
LIKE TO SEE AN ESCROW ACCOUNT LINKED TO ANY SUCH ORDER).
THIS STATUS REPORT RESPONDS TO QUESTIONS RAISED IN REF B,
INCLUDES OTHER EMBASSIES' AND AIRLINES' INITIAL REACTION TO
LAW, AND CONCLUDES WITH OUR ASSESSMENT. END SUMMARY.

2. EMBASSY AND CONGEN RIO, PURSUANT TO REF A, HAVE UNDERTAKEN
EXTENSIVE CANVASSING OF FOREIGN AIRLINES AND EMBASSIES,
CONSULTED WITH THE FEW KNOWLEDGEABLE GOB OFFICIALS
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PAGE 02 BRASIL 10618 01 OF 02 301413Z

AVAILABLE DURING THE HOLIDAY SEASON, AND REVIEWED THE
VOLUMINOUS LEGISLATION ON AVIATION FUEL. (SUMMARY OF
FINDINGS IS GIVEN IN PGH 3 AND 4 BELOW). RIO HAS CON-
TACTED PANAM, BRANIFF, KLM, LUFTHANSA, SWISSAIR, ALITALIA,
BRITISH CALEDONIA, AIR FRANCE, AND SOUTH AFRICAN AIRLINES.
EMBASSY HAS REVIEWED ISSUE WITH EMBASSIES OF FRG, NETHER-

LANDS, SWEDEN, GREAT BRITAIN, ITALY, AND FRANCE. ALTHOUGH INITIALLY MANY INTERNATIONAL AIRLINES AND MOST EMBASSIES WERE UNAWARE OF DECREE-LAW 1490, OR ITS IMPACT, INTEREST HAS RISEN DURING PAST WEEK. WITH INCREASED INTEREST, THERE HAS ALSO BEEN INCREASED DIVERSITY OF OPINION IN HOW PROBLEM SHOULD BE HANDLED. A SECOND MEETING OF THE RIO INTERNATIONAL CARRIERS GROUP (THE FIRST WAS HELD DECEMBER 16) TO CONSIDER ALTERNATIVE IS EXPECTED TO BE HELD IN JANUARY. PANAM, BRANIFF, AND ALITALIA ARE THE ACTIVISTS AMONG THE AIRLINES FOR A FIRM POSITION. EMBASSIES WHICH WE HAVE CONTACTED INDICATE A STRONG PREFERENCE FOR THE ISSUE BEING TREATED AS A COMMERCIAL RATHER THAN A DIPLOMATIC MATTER.

3. AS OF DECEMBER 1, 1976, THE BASIC CIF EX-REFINERY PRICE (DUTY-FREE) OF AVIATION FUEL IS CR 1.4343 PER LITER (UP FROM THE PRE-DEC. 1 PRICE OF CR 1.2176); THE TRANSPORTATION CHARGE IS CR 0.1438 PER LITER (NO CHANGE); AND THE "ALINEA M" AMOUNT (SUBPARAGRAPH M ENACTED BY DECREE LAW 1490 OF NOVEMBER 30) IS CR 0.1431 PER LITER (UP FROM ZERO). THE TOTAL PRICE IS NOW CR 1.7212 (UP FROM CR 1.3614) AND THE "M" AMOUNT IS 8.3 PERCENT OF THE TOTAL PRICE.

4. FOLLOWING IS KEYED TO PARA FOUR REF B:

(A) ACCORDING TO INFORMATION AVAILABLE TO US, THE "ALINEA M" WILL IMPACT EQUALLY ON BRAZILIAN INTERNATIONAL AND FOREIGN AIRLINES OPERATIONS. ACCORDING TO DECREE-LAW 1490 (INFORMAL TRANSLATION PROVIDED REF C), THE AMOUNT APPLIES TO ALL AVIATION FUEL AND LUBRICANTS EXCEPT THOSE LIMITED OFFICIAL USE

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PAGE 03 BRASIL 10618 01 OF 02 301413Z

USED BY THE BRAZILIAN ARMED FORCES. IT APPEARS, HOWEVER, THAT BRAZILIAN AIRLINES WILL BE PERMITTED TO RAISE THEIR DOMESTIC PASSENGER FARES TO OFFSET THE AMOUNT FOR THEIR DOMESTIC OPERATIONS. ACCORDING TO A VARIG CONTACT OF RIO BRANIFF MANAGER DECIO CAMOES, DOMESTIC FARES WERE EXPECTED TO GO UP SOME 18 PERCENT IN THE NEAR FUTURE TO ALLOW FOR A WAGE INCREASE. NOW THEY ARE EXPECTED TO BE BOOSTED TO BETWEEN 25 AND 26 PERCENT TO COMPENSATE FOR "M". BRIG. MOASSAB OF DAC PLANNING DEPT. SUBSEQUENTLY CONFIRMED TO RIO CONGEN OFFICER THAT DOMESTIC CARRIERS WILL PASS ON THE "M" AMOUNT TO THE CONSUMER.

(B) AT A MEETING DEC. 16, JURCAIB, THE RIO INTERNATIONAL CARRIERS GROUP, AGREED TO SEEK LEGAL ADVICE. ONE PROPOSAL PUT FORTH BY PANAM REP (RIO) RAUSCHENPLATT WAS FOR THE CARRIERS TO PAY THE AMOUNT REPRESENTED BY "M" INTO AN ESCROW ACCOUNT PENDING RESOLUTION OF THE MATTER. JURCAIB LAWYER PRECIDIO CARLOS ARAUJO MAY SEEK A COURT ORDER

IN AN ATTEMPT TO BAR IMPOSITION OF "M" UNTIL ITS LEGALITY HAS BEEN UPHELD. HE BELIEVES THAT "M" IS A TAX AND THEREFORE IN CONFLICT WITH ARTICLE 8 OF BRAZILIAN LAW 1815 OF FEBRUARY 18, 1953, WHICH READS: "THERE IS GRANTED TO FOREIGN COMPANIES THAT OPERATE REGULAR AIR SERVICES TO OR THROUGH BRAZIL, EXEMPTION FROM IMPORT DUTIES AND TAXES AND FROM SALES TAX ON FUEL, LUBRICANTS AND SPARE PARTS FOR USE BY THEIR AIRCRAFT, PROVIDED THAT THEIR GOVERNMENTS ASSURE RECIPROCITY IN THEIR TERRITORY TO BRAZILIAN FIRMS." CONGEN RIO HAS HAD EXTENSIVE AND REPEATED CONTACT WITH ALL MAJOR INTERNATIONAL CARRIERS AND REPORTS THAT THERE IS CONSIDERABLE HESITANCY ON THE PART OF MOST TO TAKE ON THE GOB, PARTICULARLY UNTIL THE FACTS AND ALTERNATIVES ARE CAREFULLY ANALYZED. IN ITS OWN CONTACTS, THE EMBASSY HAS ENCOUNTERED AN EVEN MORE CAUTIOUS ATTITUDE AMONG DIPLOMATIC MISSIONS HERE. BRITISH, FRENCH, AND ITALIAN EMBASSIES HAD LITTLE OR NO KNOWLEDGE OF THE ISSUE AND PROFESSED INDIFFERENCE; THEIR AIRLINES HAD NOT CONTACTED THEM. THE LIMITED OFFICIAL USE

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PAGE 04 BRASIL 10618 01 OF 02 301413Z

DUTCH PROFESSED INTEREST AND REQUESTED COPIES FROM US OF THE PERTINENT LAWS; KLM IS KEEPING ITS EMBASSY INFORMED. GERMAN EMBASSY IS IN CLOSE TOUCH WITH LUFTHANSA AND INFORMED US ON DECEMBER 27 THAT LUFTHANSA RIO IS AWAITING INFORMATION FROM HAMBURG AS TO WHETHER LUFTHANSA HAS PAID SUCH A CHARGE IN ANY OTHER COUNTRY. IF SO, NEITHER LUFTHANSA NOR THE GERMAN EMBASSY IS EXPECTED TO TAKE AN ACTIVE PART IN SEEKING REVOCATION OF BRAZILIAN LAW.

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PAGE 01 BRASIL 10618 02 OF 02 301350Z
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COME-00 DODE-00 DOTE-00 INR-07 NSAE-00 CIEP-01 FAA-00
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LIMITED OFFICIAL USE SECTION 2 OF 2 BRASILIA 10618

(C) IN EMBASSY AND RIO CONGEN DISCUSSIONS WITH GOB ON CHARTERS, THE GOB HAS MADE CLEAR THAT IT NO LONGER FEELS BOUND OR RESTRAINED BY THE 1966 ICAO RESOLUTION ON TAXATION OF FUEL, LUBRICANTS AND OTHER TECHNICAL SUPPLIES. (SEE REF D, PARA FIVE FOR RECENT REITERATION OF GOB POSITION BY AMBASSADOR CABRAL DE MELLO.)

(D) RESPONSE IS BEING SENT BY SEPTTEL.

(E) THE AVIATION FUND WAS ESTABLISHED IN 1967. AS DESCRIBED IN LAW 5989 OF DEC. 17, 1973 (INFORMAL TRANSLATION PROVIDED REF E), IT IS AN "ACCOUNTING FUND DESIGNED TO PROVIDE FINANCIAL RESOURCES FOR THE EXECUTION AND MAINTENANCE OF PROJECTS FORESEEN IN THE NATIONAL AIR SYSTEM, BEING APPLICABLE TO PLANS, CONSTRUCTION, MAINTENANCE, OPERATION AND ADMINISTRATION OF INSTALLATIONS AND SERVICES OF THE AERONAUTICAL INFRASTRUCTURE." MOASSAB OF DAC INFORMED RIO CONGEN OFFICER THAT THE FUND IS INTENDED TO FINANCE INTERNAL (I.E., DAC CONTROLLED) AIRPORTS AS OPPOSED TO INTERNATIONAL ONES. ALTHOUGH THE INTERNATIONAL AIRPORTS ALONG WITH THE INTERNAL ONES WILL COLLECT THE "M" LIMITED OFFICIAL USE

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PAGE 02 BRASIL 10618 02 OF 02 301350Z

AMOUNT, THE INTERNATIONAL AIRPORTS WILL NOT BENEFIT FROM THE FUND. COMMENT: IF "M" IS BEING COLLECTED AT INTERNATIONAL AIRPORTS BUT BEING USED TO FINANCE OTHER AIRPORTS, THIS WOULD APPEAR TO STRENGTHEN CASE THAT "M" MAY BE A TAX RATHER THAN A FEE. FURTHER STRENGTHENING THE CASE THAT "M" MAY BE A TAX RATHER THAN A FEE IS THE PRELIMINARY FINDING OF JURCAIB'S LAWYER THAT "M" FUNDS ARE TO BE DEPOSITED INTO THE SAME BANCO DO BRASIL ACCOUNTS AS THE PREVIOUS SOLE TAX ON FUEL AND LUBRICANTS. END COMMENT.

5. ASSESSMENT. AT THIS JUNCTURE, QUESTION OF WHETHER "ALINEA M" CHARGE IS A TAX OR A FEE MUST BE CONSIDERED MOOT (NOTE SEPTTEL). MORE INFORMATION IS DESIRABLE AS TO THE STRENGTH OF THE AIRLINES' LEGAL CASE AGAINST DECREE-LAW 1490 AND THEIR WILLINGNESS TO TAKE THE CASE TO COURT. EMBASSY ASSESSES THE SITUATION AT THE END OF DECEMBER AS FOLLOWS:

(1) IF JURCAIB TAKES LEGAL ACTION, THE EMBASSY

SHOULD CLOSELY MONITOR LEGAL PROCEEDINGS BUT ABSTAIN FROM FORMAL DIPLOMATIC REPRESENTATIONS WHILE THESE PROCEEDINGS ARE IN PROGRESS.

(2) IF JURCAIB DOES NOT TAKE LEGAL ACTION BUT REQUESTS FOR DIPLOMATIC SUPPORT FROM THE MEMBER AIRLINES ARE MADE TO THEIR RESPECTIVE EMBASSIES, WE WOULD WORK WITH INTERESTED EMBASSIES ON A COLLECTIVE APPROACH TO THE GOB.

(3) WHETHER OR NOT OTHER EMBASSIES WOULD AGREE TO A COLLECTIVE APPROACH REMAINS TO BE SEEN -- WE THINK PROSPECTS ARE POOR -- AND NO DOUBT WILL DEPEND UPON POSITION TAKEN BY CARRIERS SUCH AS LUFTHANSA. A VARIATION SHORT OF A COLLECTIVE LIMITED OFFICIAL USE

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PAGE 03 BRASIL 10618 02 OF 02 301350Z

APPROACH WOULD BE PARALLEL FORMAL REPRESENTATIONS BY SOME OF THE EMBASSIES TO THE GOB.

(4) REPRESENTATION BY USG ALONE WOULD BE THE LEAST EFFECTIVE APPROACH AND WE DOUBT IT WOULD PRODUCE ANY RESULTS.

6. WHILE AWAITING A DECISION BY JURCAIB ON LEGAL ACTION, EMBASSY PLANS TO STAY IN CLOSE TOUCH WITH OTHER EMBASSIES, WHILE CONVEYING US CONCERN OVER THIS NEW LEVY TO THE FOREIGN MINISTRY AND TO APPROPRIATE GOB AVIATION AUTHORITIES.
CRIMMINS

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